IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.Rev.Pet.No. 4384 of 2006(C)

AGAINST THE ORDER DATED 05/10/2006 IN CMP.6553/06 IN CC.371/1999 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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REVN. PETITIONER: PETITIONER/ACCUSED:

SHANAVAS, S/O. GAFOOR,
NINE STAR LUCKY CENTRE, CLOCK TOWER JUNCTION,
CHINNAKKADA, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: RESPONDENTS/COMPLAINANT:

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1. NAGALAKSHMI, W/O. SREENIVAS,
SIVAPRASADAM, HOUSE NO.7, THEVALLY NAGAR, KOLLAM.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.BEPIN VIJAYAN
SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A. NO. 12672/2006 IN CRL. R.P. NO. 4384/2006

DISMISSED

09.03.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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CRL. R.P. NO. 4384 OF 2006 C

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Dated this the 8th day of March 2007

O R D E R

The revision petitioner, the accused in C.C. No. 371/1999 and as per order of this Court in Crl. R.P No. 1691/2006, who stands sentenced to imprisonment till rising of the Court and to pay a compensation of Rs.1,00,000/- and in default to undergo simple imprisonment for two months, has sought for setting aside the order of the court below in the execution proceedings. On his application vide CMP No. 6553/2006 he had applied before Judicial First Class Magistrate II, Kollam for an order directing that he is liable to pay only a sum of Rs.43,333.67 towards the compensation of amount of Rs.1,00,000/- as he had undergone 12 days of imprisonment subsequent to the order of the appellate court as per which he has sentenced to undergo simple imprisonment for three months and to pay the amount of compensation. The counsel has relied on section 69 of IPC and the decision of this Court in **Saji Kumar v. Soman Pillai (2006(3) KLT 679)** in support of his contentions that the default sentence with respect to the sentence of fine is to be equated to the sentence to pay compensation under section 357(3) Cr.P.C. According to him, the same principles as contained in section 69 of IPC has to be

extended to the order under section 357(3) Cr.P.C. In the revision filed herein he has corrected the amount due to be paid which, according to him, was erroneously mentioned before the court below and actually he is entitled for a reduction of Rs.20,000/- out of compensation of amount of Rs.1,00,000/-. He has already deposited Rs.75,000/-.

2. I find that section 69 of IPC provides for termination of imprisonment on payment of proportional part of fine. This Court in **Saji Kumar's Case** (op. cit) has observed to the effect that so far as the realisation of the amount of compensation is concerned, the provision under section 421 Cr.P.C can be applied. The court while considering the matter in which the revision petitioner had undergone simple imprisonment for six months and had sought for setting aside the default sentence imposed this Court modified the substantive sentence to imprisonment till rising of the court and upheld the default sentence imposed and it was ordered that the period of sentence undergone subsequent to the judgment of the trial court shall be set off against the default sentence. It is pertinent to note that in the above case the court has observed that section 421 Cr.P.C permits to initiate proceedings for realisation of the amount at the discretion of

the court even if the person has undergone default sentence. The implications of Section 69 of IPC was not considered in the above case. Hence, I find that the principle of equating the order to pay compensation and the sentence of fine and the application of section 69 IPC to the order with respect to the payment of compensation was not the subject matter in the above case. In the circumstances I find that the contention of the revision petitioner herein cannot be allowed for the reason that the court has disposed of the matter finally as per order in Crl.R.P No. 1691/2006. All the same, the period of imprisonment undergone can be deducted from the period he has to undergo towards the default sentence. The respondent/complainant will be entitled to withdraw the amount in deposit.

The Crl. R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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